

Internal Revenue Service

Number: **201337012**

Release Date: 9/13/2013

Index Number: 7701.25-04, 7701.03-09

Department of the Treasury

Washington, DC 20224

Third Party Communication: None

Date of Communication: Not Applicable

Person To Contact:

, ID No.

Telephone Number:

Refer Reply To:

CC:ITA:B07

PLR-151296-12

Date:

May 22, 2013

LEGEND

Taxpayer =

State One =

First Tier Trust =

Titling Trust =

State Two =

Date =

Dear :

This letter responds to your letter dated November 29, 2012, and additional submissions, requesting a private letter ruling under section 7701(h) of the Internal Revenue Code.

FACTS

General

Taxpayer is a corporation incorporated under the laws of State One that files its federal income tax return using an accrual method and based on a fiscal year.

Taxpayer is in the vehicle leasing business, providing a range of services for organizations of different types and sizes. Its services include acquiring vehicles for lease and managing their maintenance, accident repairs, fuel, and sale. Many of the vehicles acquired by Taxpayer are leased under an "open end" master lease agreement (the "Master Lease Agreement") that incorporates a terminal rental adjustment clause ("TRAC"). Taxpayer also regularly enters into a material amount of non-TRAC leases.

Currently, each approved customer that leases a motor vehicle executes, as "Lessee," a Master Lease Agreement with Taxpayer. The Lessee also executes a separate written statement certifying, under penalties of perjury, that any vehicle leased from Taxpayer will be used more than % in the Lessee's trade or business. In the same statement, the Lessee acknowledges that it has been advised that it will not be treated as the owner of the leased vehicle for Federal income tax purposes. Each motor vehicle leased by the customer is identified in a schedule that is added to the Master Lease Agreement.

At the end of the lease term, Taxpayer takes possession of the vehicle and sells it. In the case of an open-end TRAC lease, Taxpayer must pay Lessee, as a rental adjustment, an amount equal to the excess of the sales proceeds (net of sales and related costs) over the depreciated value of the motor vehicle. If the net sales proceeds are less than the depreciated value of the vehicle, the Lessee must pay to Taxpayer, as a rental adjustment, an amount equal to the deficiency. Taxpayer, however, guarantees a minimum amount of net resale proceeds equal to the "fair value" of the motor vehicle at the beginning of the 12-month period in which the lease terminates. Because the initial lease term equals 12 full months plus any portion of the month in which the vehicle is delivered, the guaranteed minimum amount of net sales proceeds is effectively adjusted if the Lessee elects to extend the lease beyond the initial lease term.

Initial vehicle purchases are funded internally either through operating cash flow or recourse loans from a Taxpayer affiliate or unrelated third party.

Taxpayer now intends to implement a program that will allow it to obtain collateralized financing with third party financial institutions. For this purpose, Taxpayer plans to organize a trust structure that will consist of: (1) a special purpose, bankruptcy-remote trust ("First Tier Trust"); (2) a titling trust ("Titling Trust"), which will also be formed as a special purpose, bankruptcy-remote trust; and (3) certain sub-trusts (the "Sub-Trusts") created within the Titling Trust. Taxpayer is the grantor, beneficiary, and administrator of, and will own % of the interests in, the First Tier Trust. First Tier Trust is the grantor and beneficiary of, and will own % of the beneficial interests in, the Titling Trust, which will be represented by an undivided trust interest ("UTI") and one or more Special Units of Beneficial Interest (individually, "SUBI") held by the First Tier Trust. Taxpayer will also own, either directly or indirectly through disregarded entities, % of a Special Purpose Vehicle and a securitization trust.

Taxpayer created First Tier Trust, a State Two Statutory Trust, pursuant to a Trust Agreement dated Date, to hold a beneficial interest in the Titling Trust and the related Sub-Trusts. Section 2.03 of the Trust Agreement authorizes the First Tier Trust

to (1) execute, deliver, enter into and perform its obligations under the Trust Documents and Titling Trust Documents; (2) acquire, own, hold, and, as permitted under the Trust Documents, dispose of or pledge trust assets or beneficial interests therein, and distribute trust funds not otherwise allocable to expenses; (3) subject to the Trust Documents, engage in such other activities as may be required in connection with the preservation of the trust assets and the making of distributions to or upon the order of the beneficiary or any related holder; and, (4) engage in any activities described or authorized by the Trust Agreement and any and all activities necessary, appropriate, or incidental to accomplishing the foregoing.

The Trustee has no discretionary duties other than performing ministerial acts necessary to accomplish the purposes of the Trust Agreement and therefore looks to and acts at the direction of Taxpayer, as beneficiary, with regard to any non-ministerial acts otherwise permitted under the Trust Agreement. In addition, section 4.02 of the Trust Agreement provides that the Trustee must establish and maintain, at the direction and for the benefit of Taxpayer, trust accounts in which all cash and proceeds from trust assets shall be deposited. Taxpayer, as beneficiary, may authorize the Trustee to make deposits into, disbursements from, and investment of funds on deposit in, any trust account.

It is anticipated that the Titling Trust will allocate groups of leases and related vehicles (with each group consisting of both TRAC and non-TRAC leases) to separate Sub-Trusts. Unless and until leases and related vehicles held by the Titling Trust are allocated to a Sub-Trust, the beneficial ownership of those assets will be represented by the UTI.

If a group of leases and related vehicles are allocated to a Sub-Trust, the Titling Trust will issue a SUBI with respect to that Sub-Trust. The SUBI will represent, with respect to each leased vehicle in the Sub-Trust, beneficial ownership of the lease payments, and beneficial ownership of the proceeds from the sale of the vehicle increased or decreased, respectively, by any payments due from, or to, the lessee. Title to the leased vehicles will remain in the Titling Trust and will not be allocated to the SUBI.

Acting as the lessor, the Titling Trust will acquire vehicles and execute the Master Lease Agreement (TRAC and non-TRAC) with the Lessees or will act as the lessor pursuant to an assignment of the Master Lease Agreement from Taxpayer. To fund the vehicle purchases, Taxpayer may either make recourse loans to the First Tier Trust secured by a pledge of the UTI by the First Tier Trust, or make capital contributions to the First Tier Trust. The First Tier Trust will then contribute those monies to the Titling Trust.

In furtherance of its activities, under the Titling Trust's governing instrument, Titling Trust will be authorized to: (1) accept the designation as the legal title holder of the leased automobiles, (2) enter into and perform, or cause to be performed, obligations and duties under Master Lease Agreements (TRAC and non-TRAC), (3) appoint Taxpayer (or third party) as its attorney-in-fact and direct Taxpayer to perform administrative duties on behalf of the Titling Trust, (4) enter into (or accept the

assignment of) a servicing agreement under which Taxpayer will act as the servicer of the leased automobiles, (5) establish accounts and receive, maintain, invest, and disburse funds in accordance with the Titling Trust's governing instrument and the servicing agreement, and (6) as long as Taxpayer has not defaulted in its servicing duties, and at the direction of the holder of the UTI or the holder of a SUBI, (i) pledge, transfer or otherwise dispose of any interest in the assets represented by such UTI or SUBI, (ii) amend or revoke trust terms with respect to all or a portion of the assets represented by such UTI or SUBI and (iii) enter into any agreement or instruments affecting all or any portion of the assets represented by such UTI or SUBI.

From time to time, the First Tier Trust, as the owner of the UTI (or Taxpayer as owner of the First Tier Trust) will direct the Titling Trust to create a new Sub-Trust and allocate to the new Sub-Trust the Titling Trust's beneficial interests in a designated pool of vehicles and related leases. It is anticipated that the non-TRAC leases allocated to a Sub-Trust will represent a material amount of the entire pool. In addition, when selecting the vehicles for any particular Sub-Trust, Taxpayer will have to take into account the ordinary concerns of creditors such as lessee concentration, lessee credit ratings, motor vehicle type and location, and lease term.

Following an allocation of leases and related vehicles to a Sub-Trust, the Titling Trust will issue to the First Tier Trust as owner of the UTI, the SUBI representing beneficial ownership of the cash flows related to the assets of the Sub-Trust. The First Tier Trust, as owner of the UTI, will then convey the SUBI to a separate, special purpose vehicle (the "SPV"), which in turn will convey the SUBI to a securitization trust ("Securitization Trust").

The Securitization Trust will then issue instruments in the form of debt to investors, naming the Securitization Trust as the obligor. The instruments issued will impose no restrictions on which Securitization Trust assets may be used to satisfy the debt. Under the operative documents, the investors will agree to treat the instruments as indebtedness for income tax purposes and will acknowledge that they are not entitled to any depreciation with respect to any leased vehicles.

Neither the Titling Trust, the First Tier Trust, nor the SPV will pledge to the Securitization Trust the title to any vehicle to which the SUBI relates. If the Securitization Trust fails to make its debt payments, the assets acquired by the creditors will be the SUBI conveyed to the Securitization Trust and not title to any such vehicle. Vehicles will not be considered for financing before they are acquired from the manufacturer with Taxpayer's working capital and are under lease.

In furtherance of its activities, under the Securitization Trust's governing instrument, the Securitization Trust will be authorized to (1) acquire, transfer, finance, pledge, and otherwise deal with the SUBI conveyed to it, (2) undertake transactions involving the vehicles and related leases represented by the SUBI, (3) borrow money, (4) negotiate, execute and perform the obligations under any agreement relating to the foregoing activities, and (5) engage in any lawful act or activity and exercise any powers permitted under state law that are related or incidental to and necessary, convenient or advisable for the accomplishment of the foregoing purposes.

Taxpayer makes the following representations:

A. The Titling Trust, as holder of the title to each motor vehicle in a pool will be recognized as the sole owner of those motor vehicles for State law purposes.

B. At the time a Securitization Trust issues debt instruments, (1) Taxpayer will expect to receive an opinion from qualified tax counsel that such debt instruments will qualify as indebtedness for U.S. federal income tax purposes, and (2) Taxpayer and the holders of the debt instruments will expect the cash flows payable on the SUBI held by the Securitization Trust to be sufficient to make timely and complete payments on the debt instruments issued by the Securitization Trust.

C. Taxpayer will be the sole owner (either directly or through a disregarded entity or entities) of each of the Titling Trust, the First Tier Trust, the SPV and the Securitization Trust, none of which elect to be classified as an association under section 301.7701-3 of the Procedure and Administration Regulations (the "Regulations").

RULINGS REQUESTED

A. The Master Lease Agreement entered into by, or assigned to, the Titling Trust will be a "qualified motor vehicle operating agreement" under § 7701(h) and the qualification of the Master Lease Agreement as a lease for federal income tax purposes will be determined without regard to the TRAC provision of the Master Lease Agreement.

B. The Titling Trust and the First Tier Trust will be disregarded as an entity separate from Taxpayer.

LAW AND ANALYSIS

A. The Master Lease Agreement entered into by, or assigned to, the Titling Trust will be a qualified motor vehicle operating agreement.

Section 7701(h)(1) provides that in the case of a qualified motor vehicle operating agreement that contains a terminal rental adjustment clause, the agreement is treated as a lease if (but for such terminal rental adjustment clause) the agreement would be treated as a lease for Federal income tax purposes, and the lessee is not treated as the owner of the property subject to the agreement during the period the agreement is in effect.

Section 7701(h)(2)(A) defines a qualified motor vehicle operating agreement as any agreement with respect to a motor vehicle (including a trailer) that meets three requirements, set forth in subparagraphs (B), (C), and (D) of § 7701(h)(2).

First, § 7701(h)(2)(B) requires that, under the agreement, the sum of the amount the lessor is personally liable to repay, and the net fair market value of the lessor's interest in any property pledged as security for property subject to the agreement, equals or exceeds all amounts borrowed to finance the acquisition of property subject to the agreement. Any property pledged that is property subject to the agreement or

property directly or indirectly financed by indebtedness secured by property subject to the agreement is not taken into account.

Second, pursuant to § 7701(h)(2)(C), the agreement must contain a separate written statement signed by the lessee that the lessee certifies, under penalty of perjury, that it intends that more than 50 percent of the use of the property subject to the agreement is to be in a trade or business of the lessee, and that clearly and legibly states that the lessee has been advised that it would not be treated as the owner of the property subject to the agreement for federal income tax purposes.

Finally, § 7701(h)(2)(D) requires that the lessor must not know that the certification in § 7701(h)(2)(C) is false.

Taxpayer has represented that the terms of the Master Lease Agreement underlying each new TRAC lease will satisfy the requirements of § 7701(h)(2)(C). Further, Taxpayer will fund the entire acquisition price of the motor vehicle using operating capital or the proceeds of recourse debt. Thus, in either case, Taxpayer will be fully at risk on the acquisition price of the motor vehicles from the time of initial acquisition of the vehicle.

Based on the facts and representations made by Taxpayer, and provided that : (1) Securitization Trust borrows funds from lenders on a recourse basis; and (2) amounts received in lease payments and from the disposition of motor vehicles (using rental defaults consistent with historical experience) are expected to be sufficient to satisfy all obligations to lenders, we conclude that the Master Lease Agreement entered into by, or assigned to, the Titling Trust will meet the definition of a "qualified motor vehicle operating agreement" under § 7701(h)(2). In addition, qualification of the Master Lease Agreement as a lease for federal income tax purposes will be determined without regard to the TRAC provision of the Master Lease Agreement.

B. The Titling Trust and the First Tier Trust will be disregarded as an entity separate from Taxpayer.

Section 301.7701-1(a)(1) provides that whether an organization is an entity separate from its owners for federal tax purposes is a matter of federal tax law and does not depend on whether the organization is recognized as an entity under local law.

Section 301.7701-2(a) provides that a business entity is any entity recognized for federal tax purposes that is not properly classified as a trust under § 301.7701-4 or otherwise subject to special treatment under the Internal Revenue Code.

Section 301.7701-3(a) provides that a business entity that is not classified as a corporation under § 301.7701-2(b)(1), (3), (4), (5), (6), (7), or (8) (an "eligible entity") can elect its classification for federal tax purposes. An eligible entity with a single owner can elect to be classified as an association or to be disregarded as an entity separate from its owner.

Section 301.7701-3(b)(1)(ii) provides that a domestic eligible entity with a single owner is disregarded as an entity separate from its owner for federal tax purposes unless the entity elects to be treated as a corporation.

Section 301.7701-4(a) provides that in general, the term "trust" refers to an arrangement created either by a will or by an inter vivos declaration whereby trustees take title to property for the purposes of protecting or conserving it for the beneficiaries. Generally speaking, an arrangement will be treated as a trust under the Internal Revenue Code if it can be shown that the purpose of the arrangement is to vest in trustees responsibility for the protection and conservation of property for beneficiaries who cannot share in the discharge of this responsibility and, therefore, are not associates in a joint enterprise for the conduct of business for profit.

Section 301.7701-4(b) addresses "business trusts" and provides that there are other arrangements which are known as trusts because the legal title to property is conveyed to trustees for the benefit of beneficiaries, but which are not classified as trusts for purposes of the Internal Revenue Code because they are not simply arrangements to protect or conserve the property for the beneficiaries. These trusts, which are often known as business or commercial trusts, generally are created by the beneficiaries simply as a device to carry on a profit-making business which normally would have been carried on through business organizations that are classified as corporations or partnerships under the Internal Revenue Code. However, the fact that the corpus of the trust is not supplied by the beneficiaries is not sufficient reason in itself for classifying the arrangement as an ordinary trust rather than as an association or partnership. The fact that any organization is technically cast in the trust form, by conveying title to property to trustees for the benefit of persons designated as beneficiaries, will not change the real character of the organization if the organization is more properly classified as a business entity under § 301.7701-2.

Accordingly, we conclude that First Tier Trust and Titling Trust will be treated as business trusts as described in § 301.7701-4(b) and not trusts under § 301.7701-4(a) for federal income tax purposes. We further conclude that under § 301.7701-3(b)(1)(ii), First Tier Trust and Titling Trust (including the SUBI Sub-trusts) are domestic eligible entities with a single owner that are disregarded as entities separate from Taxpayer.

PROCEDURAL MATTERS

Except as expressly provided herein, no opinion is expressed or implied concerning the tax consequences of any aspect of any transaction or item discussed or referenced in this letter. Specifically, we express or imply no opinion concerning: (1) whether the Master Lease Agreement is a true lease for Federal income tax purposes; (2) a situation in which Issuer borrows funds from lenders on a nonrecourse basis; and (3) a situation in which the amounts received in lease payments and from the disposition of motor vehicles (using rental default consistent with historical experience) are not expected to be sufficient to satisfy all obligations to lenders.

This ruling is directed only to the taxpayer requesting it. Section 6110(k)(3) of the Code provides that it may not be used or cited as precedent.

Temporary or final regulations pertaining to one or more of the issues addressed in this ruling have not yet been adopted. Therefore, this ruling will be modified or revoked by the adoption of temporary or final regulations, to the extent the regulations are inconsistent with any conclusion in the letter ruling. See section 11.04 of Rev. Proc. 2013-1, 2013-1 I.R.B. 1, 50. However, when the criteria in section 11.06 of Rev. Proc. 2013-1, 2013-1 I.R.B. 1, 50 are satisfied, a ruling is not revoked or modified retroactively except in rare or unusual circumstances.

In accordance with the Power of Attorney on file with this office, a copy of this letter is being sent to your authorized representative.

The rulings contained in this letter are based upon information and representations submitted by the taxpayer and accompanied by a penalty of perjury statement executed by an appropriate party. While this office has not verified any of the material submitted in support of the request for rulings, it is subject to verification on examination.

Sincerely,

WILLIE E. ARMSTRONG, JR.
Senior Technician Reviewer, Branch 7
(Income Tax & Accounting)